

1 Isaac D. Zorea
2 Law Office of Isaac Derek Zorea
3 P.O. Box 210434
4 Anchorage, AK 99521
(907) 677-3779
(907) 644-2802 facsimile

5
6 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

7 CAROLYN MITCHELL,)
8 Plaintiff,)
9 vs.)
10 ANCHORAGE POLICE DEPARTMENT and the)
11 MUNICIPALITY OF ANCHORAGE, a)
12 municipal corporation, WALTER MONEGAN,)
13 Officer HENIKMAN, and Officer J. VOSS,)
Defendants.)

14 Case No. 3:05-cv-00273-JWS

15 **CASE AUTHORITY REGARDING SECTION 1983 CLAIMS**
16 **AND FOURTH AMENDMENT VIOLATION BY MEANS OF**
ARREST WITHOUT PROBABLE CAUSE

17
18 At the June 25, 2008, pre-trial conference, the court permitted Plaintiff to
19 identify controlling case law concerning Section 1983 cases and the state law finding
20 of false arrest.

21 Plaintiff has alleged that the facts that gave rise to this Court grant of
22 summary judgment on her false arrest claim is relevant to her claim the her Fourth
23 Amendment rights had been violated. Some discussion has been taking place
24 between Defendants and Plaintiff concerning this issue. As a result, Mitchell has
25 selected just a few key cases that support her legal premise.
26
27

1 As stated in prior briefing to this court, and in oral discussions at the pre-trial
2 conference, Mitchell believes that a 1983 claim, based on a Fourth Amendment
3 violation is established by proving only two elements. While under different facts,
4 the elements for a 1983 claim may expand, those factual elements do not exist with
5 this case. First, in this case it is established that Voss and Henikman perpetrated an
6 arrest of Mitchell. Second, it is established that Voss and Henikman did not have
7 probable cause to arrest Mitchell. The lack of probable cause is significant, and has
8 never been in dispute. Likewise, it is significant that this court has rule that an arrest
9 occurred, not an investigatory stop.
10

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12 Consequently, Mitchell has gathered a selection of case that clearly establish
13 that an arrest without probable cause violates the Fourth Amendment's
14 reasonableness requirement.

- 15
16 1) U.S. v. Dunaway, 442 U.S. 200 (1979) – This Supreme Court case has
17 been cited over 7,000 times for the principle that a “seizure” occurs
18 when a person is arrested, and that a “seizure” without probable cause
19 violates the Fourth Amendment.
20
21 2) Hayes v. Florida 470 U.S. 811 (1985) – This Supreme Court case has
22 been likewise cited consistently. This case held that a restraint,
23 amounting to an arrest (i.e. resembling in key mannerisms an arrest) if
24 done without probable cause is a violation of Fourth Amendment right
25 to be free from unreasonable search and seizure.
26
27 3) U.S. v. Ricardo, 912 F.2d 337 (9th Cir. 1990) – This Ninth Circuit

1 case, citing Dunaway examines how a Terry stop, when transformed
2 into an arrest, violates the Fourth Amendment if not supported by
3 probable cause to arrest.

4
5 4) Washington v. Lambert, 98 F.3d 1181 (9th Cir. 1996) – This Ninth
6 Circuit case dealing with facts very similar to Mitchell’s case
7 indicates how a 1983 suit is supported when an arrest, or restraint,
8 occurs without probable cause.

9
10
11 At all times, Mitchell has claimed that her 1983 claim rests upon the facts
12 that Voss and Henikman (1) arrested her, and (2) the arrest occurred without
13 probable cause, thus violated the Fourth Amendment. The issue of probable cause
14 has never been alleged by Defendants prior to trial, and that is what makes their
15 conduct, via arrest, unreasonable.

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18 Respectfully submitted this 27th day of June 2008.

19 S/ Isaac Zorea
20 Law Offices of Isaac D Zorea
21 P.O. Box 210434
22 Anchorage, AK 99521
23 907-830-1385
24 907-677-3779
25 Eyedz@gci.net

26 Certificate of Service

27 I hereby certify that on June 27, 2008
28 I electronically filed the foregoing with
the Clerk of Court using the CM/ECF

1 system which sent notification to the
2 following:

3 James Reeves; and Elizabeth Friedman

4 and I hereby certify that I have mailed by
5 United States Postal Service the document
6 to the following non CM/ECF participants:

7 none.

8 Dated this 27th day of June 2008, at Anchorage, Alaska.

9 S/ Isaac Zorea

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